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WTO Panel Sets Amount of FSC Sanctions

WASHINGTON - The European Union is entitled to impose $4.043 billion in trade sanctions as a result of the Foreign Sales Corporation provisions of U.S. tax law, according to a World Trade Organization (WTO) ruling released today.

The United States contended that sanctions should have been limited to $1 billion based on the actual impact of the FSC provisions on EU commercial interests.

"I'm disappointed that the arbitrator did not accept the lower figure put forward by the United States. We believe that $1 billion is much more accurate," said United States Trade Representative Robert B. Zoellick. "Nevertheless, the key point, as the President has said, is that the Executive branch will work with Congress to fully comply with our WTO obligations. I believe that today's findings will ultimately be rendered moot by U.S. compliance with the WTO's recommendations and rulings in this dispute."

The FSC provisions have been the subject of contention between the EU and the United States for several years. The WTO found that the U.S. provision was inconsistent with WTO obligations in a March 2000 ruling. The United States passed a new law in November 2000 to comply with U.S. obligations, but the EU challenged this measure. In January this year, the WTO found that the new law still does not comply with U.S. WTO obligations.

The U.S. Congress is working on new tax legislation aimed at bringing U.S. law into compliance with WTO obligations and, at the same time, enhancing the competitiveness of U.S. firms. The House Ways & Means Committee has held several rounds of hearings on this matter, and Chairman Thomas has introduced a bill. Zoellick recently testified before the Senate Finance Committee on the FSC issue, along with Deputy Treasury Secretary Kenneth W. Dam.

"One of the ironies of this case," said Zoellick, "is that when the dust has settled, we hope to find that the competitiveness of U.S. firms has been strengthened, rather than diminished."

Under WTO rules, the WTO Dispute Settlement Body must provide its formal approval before the EU can actually impose trade sanctions. However, there is no deadline by which the EU must submit such a request, and EU officials previously have indicated that they would refrain from imposing sanctions so long as the United States is making progress on eliminating the FSC subsidy.

The U.S. submissions in this proceeding are available on USTR’s Web site.

BACKGROUND

On March 20, 2000, the WTO ruled that the FSC provisions of U.S. tax law provided an export subsidy that is inconsistent with WTO obligations. In order to comply with these rulings, the United States passed the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (“ETI Act”) on Nov. 15, 2000. Two days later, the EU commenced a WTO dispute, alleging that the ETI Act failed to eliminate the problems that the WTO had found with the FSC provisions. On the same day, the EU also requested authority from the WTO to impose trade sanctions on $4.043 billion worth of U.S. exports. On Nov. 27, 2000, the United States and EU entered into a WTO arbitration proceeding, alleging that the amount of sanctions requested by the EU was excessive under WTO standards. This arbitration was suspended pending the outcome of the EU’s challenge of the ETI Act under WTO rules.

On Jan. 29, 2002, the WTO ruled that the ETI Act was inconsistent with WTO obligations. As a result of an earlier agreement with the EU, the arbitration then automatically resumed.

The arbitration proceeding consisted of written submissions and an oral hearing. The United States argued that under established WTO principles, the amount of any sanctions awarded to the EU had to be based on the trade impact of the U.S. subsidy on the EU. The United States estimated that this amount is roughly $1 billion per year. The EU claimed that because it could have requested as much as $13.5 billion in sanctions, the arbitrator should accept its request for $4.043 billion.

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